United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-7554

ORIGINAL

In The

United States Court of Appeals

For The Second Circuit

HARRY JACOBSON,

Appellant,

vs.

CASPAR WEINBERGER, Secretary Health, Education & Welfare,

Appellee.

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P/S

CROSS BRIEF FOR APPELLANT

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UNITED STATES COURT OF APPEALS

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HARRY JACOBSON,

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- v -

CASPER WEINBERGER, Secretary of Health, Education and Welfare

Appellee

APPELLANT'S CROSS BRIEF

S T A T E M E N T O F T H E C A S E

An Observation To Be Reckoned With

In August 1935 Congress enacted social security laws covering employees only.

In 1950 Congress added coverage for employers and the social security laws were addended.

Congress increased statutory wages to be counted to account for employers as indicated in enactments in Section 215(e) and Section 212.

These laws and the customs embodied in them have been shown to be unavailing in the redundant arguments in this instant case.

Factually their absence is the cause of the redundant governmental display of recalcitrance.

The special United States Attorney is recalcitrant to intelligize a legal argument in reverse.

It seems to me, the government by and with its spokesman allows an interference of shrewdness to dissipate the mitigation of injustice.

I am pro se. I certainly will not propose to be able to interpret law better than a specialist on the subject.

In an instance of use of shrewd tactics it would be a certainty to be able to find a pro se adversary to upset.

However shrewdness makes simplicity, to an adversary it might be an easy upset.

In substance and effect I mean to convey this argument not to have to counter redundancy.

If this adversary would tend the pro se argument and abandon his attitude of redundancy of prosecution, he would automatically release justice.

My adversary has not been obedient to the law.

THEREFORE, I respectfully refer this Court to my brie and my filed papers in the ordinary court as and for a would be necessity for cross argument.

Yours etc.

Harry Jacobson

Appellant Pro Se

DATED: New York
New York
December 12, 1975

EXAMPLES OF RECALCITRANCE AND DISOBEDIENCE TO LAW

My taxable self employment income for 1970 was $5118.00. Such was my largest self employment taxable income within the statutory limits of counted social security self employment income to be allowed to be counted in determining a largest average monthly wage in order to find the largest primary insurance amount pursuant to Section 215 subsection(e).

Public Law 89-97 dated July 30,1965 amended the provisions of the Social Security Act. Its Section 302(e) amended Section 215(e) whose title is "CERTAIN WAGES AND SELF EMPLOYMENT INCOME NOT TO BE COUNTED", to read as follows:

"(e) For the purposes of subsection (b) and (d) - (1) in computing an individual's average monthly wage there shall not be counted the excess over $3600 in the case of any calendar year after 1950 and before 1955, the excess over $4200 in the case of any calendar year after 1954 and before 1959, the excess over $4800 in the case of any calendar year after 1958 and before 1966, and the excess over $6600 in the case of any calendar year after 1965, of (A) the wages paid to him in such year, plus (B) the self employment income credited to such year(as determined under section 212)

1970-$5116 is larger than $4800(1959-1965),
larger than $4200(1955-1958),
larger than $3600(1951-1954),
therefor it is a new unrestrained larger taxable income to be counted after 1965 only.

My adversary SUBSTITUTES my 1970 earnings of $5116 within a group of ten years in a computation period BEFORE 1965 and thereby invalidates, confuses and in every manner defaleates the prime factor of " AVERAGE MONTHLY WAGE" determination.

Moreover, this unlawful computation reduces the benefit equity, and is failure to comply with Section 215(f)(1)(2)(4).

And my adversary's confession of such wrong doings in his brief's statement on page 10 start of last sentence quote " Jacobson also argued that Section 415(f)(2) requires that if an individual has new earnings, only those earnings may be used in computing the average monthly wage. This is erronious. The prior earnings (other than those that may be removed from the computation because these earnings become the lowest earnings) continue to be utilised in computing the average monthly wage."

42 U S C 402(a),(q) is exemplified a great deal in all my adversary's arguments. He cites transcript record page 44. This is an instrument purportedly a statement by claimant, surmisedly, only to the extent understandable when executed.

However, due deliberation, and the exactitude of law show that November 1,1965 is a legal application only for a benefit under 42 U S C 402 (a) for the month of January 1966. Authority P.L.89-97 on Medicare.

Moreover, the form is dated July 14,1966 and as such is a claim for a benefit for July 1966. I refer the Court to Section 202(j)(1) for authority.

It is insane argument that a July 1966 application for a benefit that was due January 1966 is an election for a reduced benefit appertaining the law of 42 U S C 402 (Q).

On page twelve of his brief, using such insane argument, my adversary mentions $4.80 which is a medicare premium charge.

On page 11 of his brief he directs attention to my supplementary affidavit of April 21,1975. His argument on it is partial truth.

Section 203 the law of MAXIMUM BENEFITS completely ignored by the government compensates an individual for his loss of benefits due to excess earnings, such excess earnings change column V of the table of determination for a primary insurance amount.

Section 203(a), column V in the table lines up with column III.

Column III is the average monthly wage.

If there is a reduction in benefits in column V it is because there is a gain in column III (increased earnings resulting increased average monthly wage).

The gain in column III again shows up in line with column V.

The government is mute on column V.

This cross brief negates the stand taken against me by the government.

Dated: New York New York
December 1975

Respectfully submitted,

HARRY JACOBSON
Plaintiff Appellant, Pro se

SUPPLEMENTARY COMMENTARY

Conclusion

The Social Security Administrators gave me the wrong plan of insurance.
My brief appendix indicates the points of law, which to have been "otherwise" used than that used by by the administrators of social security insurance, is a proper application of law to my status as that of a man born in 1901 entitled to a January 1966 social security old age insurance benefit, and would indeed set up my proper plan of insurance.

The administrators used the plan they interpreted from Section 215(b)(1)(A)(B)(2)(A)(B), and interpreted substitution. Connotatively subparagraph (C)(i) is " for the purposes of (B)" and changes as follows, quoting the law, "(whether by reason of section 202(j)(1) or otherwise) ", and "otherwise" is the (C)(i) indicated in the law of Section 215(f)(2) in which it is referred to as (b)(2)(C).
My appendix indicates the laws of proper administration of " 202(j)(1) or otherwise", indeed both contingencies apply in this instant case, and ignored by the Social Security Administrators.

Administrative transcript record exhibit number 11, page 40 shows my PIA* as $98.50 measured by shown dividend $38334.66, closing date 1965 and a resulting average monthly wage of $336. This is the plan above mentioned as used by the administrators.

Use of my brief's points of law concerning same closing date namely 1965, gives results of AMW* of $278.00 and PIA* of $107.80. Latter results are computed in my depositions filed in the U.S.District Court identified in the certified court record as documents numbers 9 and 14 and their notices dated April 21,1975 and June 23,1975 respectively.

TR* - Administration transcript record
AMW*- AVERAGE MONTHLY WAGE
PIA*- PRIMARY INSURANCE AMOUNT
SSA* SOCIAL SECURITY ACT
TD*- Table of Determination of PIA

In 1967 a new SSA P.L.90-248, Amendments of 1967, TD indicates AMW of $278 measures a PIA of $122.20 for January 1968 payable February 1968, a 13% general benefit increase.

Superseding SSA P.L.91-172, Amendments of 1969, TD indicates AMW of $278 measures a PIA of $140.60 for December 1968, this laws effective date being December 1969 and payable January 1970, a 15% general benefit increase.

My 1970 earnings of $5116 recomputed with last previous computation namely AMW $278 results in new AMW of $350 for each month of 1970 including January 1970. New AMW of $350 measures a new PIA of $161.50 for January 1970 in the same law effective for December 1969.
However, throughout 1970 because of my earnings of $5116 and Section 203(a)(b)(f), my maximum benefit was zero, but my earnings of $5116 resulted in a new AMW of $426 a measure for a December 1969 benefit and in the Amendments of 1969, the law effective for a December 1969 benefit, the TD indicates therein that AMW of $426 measures PIA entitlement of $183.60 for January 1970 including December 1970.

Superseding SSA P.L.92-5 dated March 1971 its law effective for a PIA for December 1970, its TD indicates AMW of $426 measures a PIA of $201.80, a 10% general benefit increase.

Superseding SSA P.L.92-336, 1972 Amendments effective law for a benefit payable in August 1972 its TD indicates AMW of $426 measures a PIA of $242.40, a 20% general benefit increase.

The government failed to insure me properly and the District Court's decision should not be affirmed.

Respectfully submitted,

Harry Jacobson

DATED: New York New York
December 1975

HARRY JACOBSON
Appellant, Pro se

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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HARRY JACOBSON,
Appellant : CASE NO.75-7554

-against- ACKNOWLEDGMENT OF SERVICE
PROOF OF SERVICE

CASPAR WEINBERGER, Secretary :
Health Education & Welfare :

Appellee

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PLEASE TAKE NOTICE that of acknowledgment and proof of service of a copy of APPELLANT'S CROSS BRIEF in the above entitled matter.

DATED: New York New York
December 19,1975

HON. THOMAS J.CAHILL
United States Attorney for the
Southern District of New York
Attorney for the United States
of America

THOMAS H. BELOTE,
Special Assistant United States Attorney,
Of Counsel

Thomas H. Belote
by Mateverend